

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-213492

DATE: November 22, 1983

MATTER OF: H & W Industries, Inc.

DIGEST:

The 10-day period for filing protests in GAO after contracting agency denial of protest filed initially with contracting agency is not tolled by repeated attempts to convince contracting agency officials that protest is meritorious. Accordingly, where protester waited more than 10 days to file protest in GAO after protest filed with contracting agency was denied by contracting agency, protest to GAO is untimely and not for consideration on its merits.

H & W Industries, Inc. (H & W), protests award of a contract for supply of PVC pipe, fiberglass pipe and related materials to CertainTeed by the United States Agency for International Development (AID) pursuant to invitation for bids No. BVS/62-83/ARE. Basically, H & W protests that the evaluation of bids was performed improperly, that a proper evaluation would show that H & W is the lowest priced bidder, and that CertainTeed's bid is nonresponsive to the IFB specifications.

We find that H & W's protest was not filed in our Office in a timely manner.

The record shows that H & W protested to AID by letter dated August 31, 1983. On September 23, H & W received a response from the Department of State denying its protest. Also, on September 23, H & W wrote to AID representatives appealing the denial of its original protest. AID responded to H & W's appeals and affirmed its earlier denial of the original H & W protest; H & W received AID's response to its appeals by September 29. By letter dated September 29, H & W again protested to AID. Finally, on October 21, H & W filed its protest in our Office.

Section 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 21 (1983)) requires protests of other than solicitation defects to be filed within 10 working days after the protester knew or should have known its basis for protest. While a protester may file its protest initially with the contracting agency, under section 21.2(a) of our Procedures, any subsequent protest to our Office must be filed within 10 working days after the protester becomes

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aware that the contracting agency has denied its protest to the contracting agency. The Helicon Group, Ltd., B-210336, January 13, 1983, 83-1 CPD 37. In this case, since H & W received AID's denial of its protest to AID on September 23, any subsequent protest to the General Accounting Office had to be filed within 10 working days of September 23. However, H & W filed several appeals to AID in an attempt to convince AID that its protest was meritorious before filing a protest in our Office on October 21. We have held that the 10-day period for filing in our Office is not tolled by continuous appeals to the contracting agency after it has denied the initial protest. The Helicon Group, Ltd., supra. Because H & W did not file its protest in our Office within 10 days after it received AID's initial denial of the protest H & W filed with AID, H & W's protest to our Office is untimely.

Consequently, H & W's protest is not for consideration on the merits and is summarily dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel